IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

OP.No. 28464 of 2000(L)

PETITIONER:

N.T. KESARI MENON, ASSISTANT OFFICER, CUSTOMER SERVICE, (CHIEF TRAFFIC ASSISTANT-CRA) STAFF NO. 28542, COMMERCIAL DEPARTMENT, AIR INDIA, TRIVANDRUM.

BY ADV. SRI.N.NANDAKUMARA MENON
SRI.K.VINODKUMAR

RESPONDENTS:

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1. AIR INDIA LIMITED, REPRESENTED BY THE MANAGING DIRECTOR, SANTA CRUZ, BOMBAY.

2. THE DIRECTOR, HUMAN RESOURCES DEVELOPMENT DEPARTMENT, AIR INDIA, OLD AIR PORT, BOMBAY.

3. THE COMMERCIAL MANAGER (ADMINISTRATION AND CO-ORDINATION) COMMERCIAL DEPARTMENT, AIR INDIA, SANTA CRUZ, BOMBAY.

4. C. KURIAN, OFFICER, CUSTOMER SERVICE, STAFF NO. 28102, AIR INDIA INTERNATIONAL AIRPORT, TRIVANDRUM.

5. VIJAYAN UNNI, OFFICER, CUSTOMER SERVICE, STAFF NO. 28104, AIR INDIA, INTERNATIONAL AIR PORT, TRIVANDRUM.

BY ADV. SRI.JOSEPH KODIANTHARA
SRI.JOSEPH MARKOSE

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: PHOTOCOPY OF ORDER REF. NO. RMD/38815 DATED 05.02.1979 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P2: PHOTOCOPY OF ORDER OF CONFIRMATION REF. NO. EMP-1/3/9695 DATED 13.12.1979 ISSUED TO THE PETITIONER.

EXT.P3: TRUE COPY OF APPLICATION FOR THE POST OF TRAFFIC ASSISTANT DATED 12.10.1983 SUBMITTED BY THE PETITIONER BEFORE THE MANAGER, AIR INDIA, TRIVANDRUM.

EXT.P4: PHOTOCOPY OF ORDER OF PROMOTION DATED 30.12.1991 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

EXT.P5: PHOTOCOPY OF ORDER OF CONFIRMATION REF. NO. EMP:2:5:28542 DATED 05.09.1992 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

EXT.P6: PHOTOCOPY OF ORDER OF PROMOTION NO. EMP:2:5:28542 DATED 25.05.1996 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

EXT.P7: PHOTOCOPY OF CIRCULAR REF. NO. EST/1-45 DATED 05.09.2000 ISSUED BY THE 3RD RESPONDENT.

EXT.P8: PHOTOCOPY OF REPRESENTATION SUBMITTED BY THE PETITIONER AND OTHER SIMILARLY SITUATED STAFF TO THE 1ST RESPONDENT DATED 07.10.2000.

RESPONDENTS EXHIBITS:

EXT.R1(a): TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 04.03.1999.

EXT.R1(b): TRUE COPY OF THE MINUTES OF THE METTING HELD ON 22.03.1999.

/True Copy/

P.A to Judge.

THOTTATHIL B. RADHAKRISHNAN, J

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O.P.No.28464 Of 2000

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Dated this the 4th day of June, 2007.

J U D G M E N T

Heard.

2. Petitioner and respondents 4 and 5 were working as Teleprinter Operators in the Department of Information and Technology in Air India Ltd. Petitioner was senior to respondents 4 and 5 in that category.

3. At that time, selection as Traffic Assistants in Commercial Department was by competition. Petitioner and respondents 4 and 5 competed. Petitioner was selected while respondents 4 and 5 were not. Petitioner, the admitted senior in the category of Teleprinter Operator in the Department of Information and Technology, thus moved to the Commercial Department and joined as the junior most Traffic Assistant in 1985. Going by the service conditions that is then prevailed. Petitioner's due credit of 7 years seniority as Teleprinter Operator was not then to be accounted.

4. Thereafter, respondents 4 and 5 who were unsuccessful in the competition along with the petitioner,for Traffic Assistant, continued in the Department of Information and Technology and obtained promotions in that Department by usual course. In the meanwhile, the petitioner also obtained his due promotions in the Commercial Department.

5. With the technological advance in communication technology, the post of Teleprinter Operator and Telex Supervisor became redundant in Department of Information and Technology as far as Air India is concerned. Respondents 4 and 5 and, may be, similarly placed other persons who were working, either as Teleprinter Operators or Telex Supervisors, faced unavoidable consequences of those posts becoming redundant.

6. At the request of Air India Employees' Guild, the only recognised union representing the ground staff in the technical and non technical categories of staff in Air India, the management decided to re-deploy those Teleprinter Operators,

Telex Supervisors etc. whose posts became redundant. This led to the deployment of respondents 4 and 5 to the Commercial Department as Assistant Managers giving due recognition to their seniority in the Department of Information and Technology, by taking the total length of service. The resultant situation was that the redundancy of the posts held by respondents 4 and 5 turned out to be, to their advantage, of being placed in a different category, giving due credit to the entire length of service while the petitioner who proved his merit to be selected as Traffic Assistant in 1985, lost credit of seven years of his service and stands superseded by his juniors, respondents 4 and 5, that too, after he had, in 1985, proved his merit, in comparison to respondents 4 and 5, to move to the Commercial Department, on competition.

7. While what respondents got by virtue of their placement as above may be permissible while dealing with redundant posts, it would be plainly impermissible and unreasonable to have the petitioner to suffer in such situation, because if respondents 4

and 5 were to go to the Commercial Department at any point of time later to the petitioner, they would also have to forgo their earlier service and go to the Commercial Department as only below the petitioner because the entry to the Commercial Department has to be as the junior most.

8. The situation obtained by letting respondents 4 and 5 occupy posts above the post held by the petitioner in the Commercial Department, is plainly illogical, unreasonable, unjust and unconstitutional, be it in the service of statutory body or for that matter, in the service of a government company, were public funds are involved.

9. The curative process by which the rights of the parties can be dealt with to rectify the anomaly created is either to make respondents 4 and 5 suffer deprivation of the service in the Department of Information and Technology and treat them as having entered the Commercial Department as the junior most or to restore to the petitioner the entire length of service by

reckoning the period deprived on account of his entry into the Commercial Department in 1985, as also part of his service for determining his weightage vis-a-vis respondents 4 and 5.

For the foregoing reasons , this writ petition is allowed and it is declared that the petitioner shall be treated as not having lost his service rendered in the Department of Information and Technology as was imposed while he was selected and appointed as Traffic Assistant in Commercial Department in 1985 and his seniority shall be so determined and he shall be placed above respondents 4 and 5. All necessary consequential benefits on the basis of this declaration shall be available to the petitioner and any monetory benefits on that account shall be released to him within a period of three months from the date of receipt of a copy of this judgment. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

SJ